

Short Title: Conforming Changes/Elective Life Estate.

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE THE STATUTES ON PARTITION OF PROPERTY AND TO
MAKE FURTHER TECHNICAL, CONFORMING, AND MODERNIZING
AMENDMENTS TO THE ELECTIVE LIFE ESTATE STATUTE.

The General Assembly of North Carolina enacts:

*****THIS DRAFT REPRESENTS A PORTION OF A LARGER DRAFT TO
MODERNIZE THE PARTITION LAWS.*****

[Staff Note: In its review of the Partition of Property/Attorneys' Fees Third Draft and the Real Property Partitions/Elective Life Estate Third Draft, the General Statutes Commission approved amendments to G.S. 6-21 and G.S. 29-30. These amendments are included in Sections 5, 7, and 12 of this draft, with minor deviations highlighted.]

PART I. RECODIFY AND MODERNIZE PARTITION OF PROPERTY STATUTES

...

PART II. CONFORMING CHANGES

SECTION 2. G.S. 1-301.2 reads as rewritten:

"§ 1-301.2. Transfer or appeal of special proceedings; exceptions.

(a) Applicability. – This section applies to special proceedings heard by the clerk of superior court in the exercise of the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate court. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court.

(c) Duty of Judge on Transfer. – Whenever a special proceeding is transferred to a court pursuant to subsection (b) of this section, the judge may hear and determine all matters in controversy in the special proceeding, unless it appears to the judge that justice would be more efficiently administered by the judge's disposing of only the matter leading to the transfer and remanding the special proceeding to the clerk.

(d) Clerk to Decide All Issues. – If a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding.

(e) Appeal of Clerk's Decisions. – ~~Except as provided in G.S. 46-28.1(f), a~~ A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Under G.S. 46A-85(a), however, a party may appeal an order confirming the partition sale of real property within 10 days of the order becoming final. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

(f) Service. – Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law.

(g) Exception for Incompetency and Foreclosure Proceedings and Proceedings to Permit Sterilization for Medical Necessity. –

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes, or proceedings to determine whether a guardian may consent to the sterilization of a ward with a mental

1 illness or intellectual disability under G.S. 35A-1245, shall not be transferred
2 even if an issue of fact, an equitable defense, or a request for equitable relief
3 is raised. Appeals from orders entered in these proceedings are governed by
4 Chapter 35A of the General Statutes to the extent that the provisions of that
5 Chapter conflict with this section.

6 (2) Foreclosure proceedings under Article 2A of Chapter 45 of the General
7 Statutes shall not be transferred even if an issue of fact, an equitable defense,
8 or a request for equitable relief is raised. Equitable issues may be raised only
9 as provided in G.S. 45-21.34. Appeals from orders entered in these
10 proceedings are governed by Article 2A of Chapter 45 of the General Statutes
11 to the extent that the provisions of that Article conflict with this section.

12 (h) Exception for Partition Proceedings. – Notwithstanding the provisions of subsection
13 (b) of this section, the issue whether to order the actual partition or the sale in lieu of partition of
14 real property that is the subject of a partition proceeding shall not be transferred and shall be
15 determined by the clerk. The clerk's order determining this issue, though not a final order, may
16 be appealed pursuant to subsection (e) of this section."

17 **SECTION 3.** G.S. 1-394 reads as rewritten:

18 **"§ 1-394. Contested special proceedings; commencement; summons.**

19 Special proceedings against adverse parties shall be commenced as is prescribed for civil
20 actions. The summons shall notify the defendant or defendants to appear and answer the
21 ~~complaint, or petition, complaint or petition~~ of the plaintiff within 10 days after its service upon
22 the defendant or defendants, and must contain a notice stating in substance that if the defendant
23 or defendants fail to answer the ~~complaint, complaint~~ or petition, within the time specified, the
24 plaintiff will apply to the court for the relief demanded in the ~~complaint, complaint~~ or petition.
25 The summons must run in the name of the State, ~~and~~ be dated and signed by the clerk, assistant

~~clerk-clerk,~~ or deputy clerk of the superior court having jurisdiction in the special proceeding,
~~and~~ be directed to the defendant or defendants, and be delivered for service to some proper
person, as defined by ~~Rule 4(a) of the Rules of Civil Procedure.~~ G.S. 1A-1, Rule 4(a). The clerk
shall indicate on the summons by appropriate words that the summons is issued in a special
proceeding and not in a civil action. The manner of service ~~shall be as is~~ as prescribed for
summons in civil actions by ~~Rule 4 of the Rules of Civil Procedure.~~ Provided, in G.S. 1A-1, Rule
4. In partition proceedings under ~~Chapter 46~~ Chapter 46A of the General Statutes or where the
defendant is an agency of the federal government, ~~or~~ an agency of the State, ~~or~~ a local
government, or an agency of a local government, the time for filing an answer or other ~~plea shall~~
~~be pleading is~~ within 30 days after the date of service of summons or after the final determination
of any motion required to be made prior to the filing of an answer."

SECTION 4. G.S. 1-502 reads as rewritten:

"§ 1-502. In what cases appointed.

A receiver may be ~~appointed~~ appointed in any of the following cases:

- (1) Before judgment, on the application of either party, when ~~he~~ the party
establishes an apparent right to property ~~which~~ that is the subject of the action
and in the possession of an adverse party, and the property or its rents and
profits are in danger of being ~~lost,~~ lost or materially injured or impaired;
~~except a receiver, however, shall not be appointed~~ in cases where judgment
upon failure to answer may be had on application to the court.
- (2) After judgment, to carry the judgment into effect.
- (3) After judgment, to dispose of the property according to the judgment, or to
preserve it during the pendency of an appeal, or when an execution has been
returned unsatisfied, and the judgment debtor refuses to apply ~~his~~ the property
in satisfaction of the judgment.

(4) In cases provided in G.S. 1-507.1 and in ~~like~~ similar cases, ~~of the~~ regarding property within this State of foreign corporations.

(5) In cases ~~wherein~~ where restitution is sought for violations of G.S. 75-1.1.

(6) In cases involving partition of real property, pursuant to ~~G.S. 46-3.1.~~ G.S. 46A-26.

The provisions of ~~G.S. 1-507.1 through 1-507.11~~ are ~~applicable, as near as may be, to~~ receivers appointed hereunder. Part 2 of Article 38 of Chapter 1 of the General Statutes applies to the appointment of a receiver of a corporation under this section."

[Staff Note: Part 2 of Article 38 of Chapter 1 of the General Statutes consists of G.S. 1-507.1 through G.S. 1-507.11 and governs receivers of corporations.]

SECTION 5. G.S. 6-21 reads as rewritten:

"§ 6-21. Costs allowed either party or apportioned in discretion of court.

Costs in the following matters shall be taxed against either party, or apportioned among the parties, in the discretion of the court:

(1) Application for years' support, for surviving spouse or children.

(2) Caveats to wills and any action or proceeding ~~which~~ that may require the construction of any will or trust agreement, or fix the rights and duties of parties ~~thereunder; provided, that in~~ under any will or trust agreement. In any caveat proceeding under this subdivision, the court shall allow attorneys' fees for the attorneys of the caveators only if it finds that the proceeding has substantial merit.

(3) Habeas ~~corpus; and the~~ corpus. The court shall direct ~~what~~ which officer shall tax the costs ~~thereof.~~ of the proceeding.

(4) In actions for divorce or ~~alimony; and the~~ alimony. The court ~~may~~ may, both before and after ~~judgment~~ judgment, make ~~such~~ any order respecting the

1 payment of ~~such~~ costs ~~as may be~~ incurred by either spouse from the sole and
2 separate estate of either spouse, as may be just.

3 (5) Application for the establishment, ~~alteration~~ alteration, or discontinuance of a
4 public road, ~~cartway~~ cartway, or ferry. The board of county commissioners
5 ~~may order the costs incurred before them paid in their discretion in its~~
6 discretion may assess the costs incurred before the board.

7 (6) The compensation of referees and commissioners to take depositions.

8 (7) All costs and expenses incurred in special proceedings for the ~~division or sale~~
9 ~~of either real estate or personal property under the Chapter entitled~~
10 ~~Partition~~ partition of real or personal property under Chapter 46A of the
11 General Statutes, except that attorneys' fees shall be assessed in accordance
12 with G.S. 46A-3.

13 (8) In all proceedings under ~~the Chapter entitled Drainage~~, Chapter 156 of the
14 General Statutes relating to drainage, except as ~~therein~~ otherwise
15 provided ~~provided in that Chapter.~~

16 (9) In proceedings for reallocation of homestead for increase in value, as provided
17 in the Chapter, Civil Procedure.

18 (10) In proceedings under Article 3 of Chapter 49 of the General Statutes regarding
19 children born out of wedlock.

20 (11) In custody proceedings under Chapter 50A of the General Statutes.

21 (12) In actions brought for misappropriation of a trade secret under Article 24 of
22 Chapter 66 of the General Statutes.

23 The word "costs" as ~~the same appears and is used in this section shall be construed to include~~
24 includes reasonable attorneys' fees in ~~such whatever~~ amounts ~~as the court shall~~ in its discretion
25 ~~determine determines~~ and allow: ~~provided that attorneys' allows.~~ Attorneys' fees in actions for

~~alimony~~ alimony, however, shall not be included in the costs as provided ~~herein,~~ in this section
but shall be determined and provided for in accordance with G.S. 50-16.4."

[Staff Note: The General Statutes Commission approved most of these amendments to G.S. 6-21 when it considered the Partition of Property/Attorneys' Fees Third Draft. Minor deviations from that draft are highlighted. The Commission asked staff to investigate whether G.S. 6-21(9) should be repealed as obsolete. Session Laws 1981, c. 490, as amended by Session Laws 1981, c. 1001, repealed the homestead provisions in Chapter 1 of the General Statutes, including G.S. 1-373, which governed the procedure to reallocate a homestead due to an increase in value. The session law replaced the homestead laws with the exemption laws in Article 16 of Chapter 1C of the General Statutes but did not include a comparable successor provision to G.S. 1-373. Although G.S. 1C-1603(g) provides that an exemption may be modified due to a substantial change in value, this modification is by motion in the original exemption proceeding. Staff consulted with the Bankruptcy Section of the North Carolina Bar Association, the Administrative Office of the Courts, and the North Carolina Advocates for Justice (NCAJ). The Bankruptcy Section's Legislative Committee commented that G.S. 6-21(9) should be repealed as obsolete. The Administrative Office of the Courts did not take a position on this issue. The NCAJ commented that there is a possibility of G.S. 6-21(9) being used in the context of G.S. 105-277.1, 105-277.1B, and 105-277.1C.]

SECTION 6. G.S. 11-11 reads as rewritten:

"§ 11-11. Oaths of ~~sundry~~ various persons; forms.

The oaths of office to be taken by the ~~several persons hereafter named~~ persons listed in this section shall be in the words following the names of ~~said~~ the persons respectively, in all cases after taking the separate oath required by Article VI, Section 7 of the Constitution of North Carolina:

Administrator

You swear (or affirm) that you believe A. B. died without leaving any last will and testament; that you will well and truly administer all and singular the goods and chattels, rights and credits of the said A. B., and a true and perfect inventory thereof return according to law; and that all other duties appertaining to the charge reposed in you, you will well and truly perform, according to law, and with your best skill and ability; so help you, God.

Attorney at Law

I, A. B., do swear (or affirm) that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability; so help me, God.

Attorney General, State District Attorneys and County Attorneys

I, A. B., do solemnly swear (or affirm) that I will well and truly serve the State of North Carolina in the office of Attorney General (district attorney for the State or attorney for the State in the county of _____); I will, in the execution of my office, endeavor to have the criminal laws fairly and impartially administered, so far as in me lies, according to the best of my knowledge and ability; so help me, God.

Auditor

I, A. B., do solemnly swear (or affirm) that I will well and truly execute the trust reposed in me as auditor, without favor or partiality, according to law, to the best of my knowledge and ability; so help me, God.

Book Debt Oath

You swear (or affirm) that the matter in dispute is a book account; that you have no means to prove the delivery of such articles, as you propose to prove by your own oath, or any of them, but by yourself; and you further swear that the account rendered by you is just and true; and that you have given all just credits; so help you, God.

Book Debt Oath for Administrator

You, as executor or administrator of A. B., swear (or affirm) that you verily believe this account to be just and true, and that there are no witnesses, to your knowledge, capable of proving the delivery of the articles therein charged; and that you found the book or account so stated, and do not know of any other or further credit to be given than what is therein given; so help you, God.

Clerk of the Supreme Court

I, _____, do solemnly swear that I will discharge the duties of the office of clerk of the Supreme Court without prejudice, affection, favor, or partiality, according to law and to the best of my skill and ability, so help me, God.

Clerk of the Superior Court

I, A. B., do swear (or affirm) that, by myself or any other person, I neither have given, nor will I give, to any person whatsoever, any gratuity, fee, gift or reward, in consideration of my election or appointment to the office of clerk of the superior court for the county of _____; nor have I sold, or offered to sell, nor will I sell or offer to sell, my interest in the said office; I also solemnly swear that I do not, directly or indirectly, hold any other lucrative office in the State; and I do further swear that I will execute the office of clerk of the superior court for the county of _____ without prejudice, favor, affection or partiality, to the best of my skill and ability; so help me, God.

Commissioners Allotting a Year's Provisions

You and each of you swear (or affirm) that you will lay off and allot to the petitioner a year's provisions for herself and family, according to law, and with your best skill and ability; so help you, God.

Commissioners ~~Dividing and Allotting~~ Apportioning Real Estate

You and each of you swear (or affirm) that, in the partition of the real estate now about to be made by you, you will do equal and impartial justice among the several claimants, according to their several rights, and agreeably to law; so help you, God.

Executor

You swear (or affirm) that you believe this writing to be and contain the last will and testament of A. B., deceased; and that you will well and truly execute the same by first paying debts and then devises, as far as the decedent's estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you, and according to law; so help you, God.

Grand Jury-Foreman of

You, as foreman of this grand inquest for the body of this county, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the State's

counsel, your fellows' and your own you shall keep secret; you shall present no one for envy, hatred or malice; neither shall you leave anyone unrepresented for fear, favor or affection, reward or the hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of your understanding; so help you, God.

Grand Jurors

The same oath which your foreman hath taken on his part, you and each of you shall well and truly observe and keep on your part; so help you, God.

Grand Jury-Officer of

You swear (or affirm) that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement, and without disclosing the contents thereof; so help you, God.

Jury-Officer of

You swear (or affirm) that you will keep every person sworn on this jury in some private and convenient place when in your charge. You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court; so help you, God.

Oath for Petit Juror

1 You do solemnly swear (affirm) that you will truthfully and without prejudice or partiality
2 try all issues in civil or criminal actions that come before you and give true verdicts according to
3 the evidence, so help you, God.

4
5 Justice, Judge, or Magistrate of the General Court of Justice

6
7 I, _____, do solemnly swear (affirm) that I will administer justice without favoritism to anyone
8 or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or
9 reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my
10 office, except the salary and allowances by law provided; and that I will faithfully and impartially
11 discharge all the duties of ___ of the _____ Division of the General Court of Justice to the best of
12 my ability and understanding, and consistent with the Constitution and laws of the State; so help
13 me, God.

14
15 Register of Deeds

16
17 I, A. B., do solemnly swear (or affirm) that I will faithfully and truly, according to the best
18 of my skill and ability, execute the duties of the office of register of deeds for the county of _____,
19 in all things according to law; so help me, God.

20
21 Secretary of State

22
23 I, A. B., do swear (or affirm) that I will, in all respects, faithfully and honestly execute the
24 office of Secretary of State of the State of North Carolina, during my continuance in office,
25 according to law; so help me, God.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Sheriff

I, A. B., do solemnly swear (or affirm) that I will execute the office of sheriff of __ county to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or for making any false return on any process to me directed; so help me, God.

Law Enforcement Officer

I, A. B., do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.

State Treasurer

I, A. B., do swear (or affirm) that, according to the best of my abilities and judgment, I will execute impartially the office of State Treasurer, in all things according to law, and account for the public taxes; and I will not, directly or indirectly, apply the public money to any other use than by law directed; so help me, God.

Surveyor for a County

I, A. B., do solemnly swear (or affirm) that I will well and impartially discharge the several duties of the office of surveyor for the county of _____, according to law; so help me, God.

Treasurer for a County

I, A. B., do solemnly swear (or affirm) that, according to the best of my skill and ability, I will execute impartially the office of treasurer for the county of _____, in all things according to law; that I will duly and faithfully account for all public moneys that may come into my hands, and will not, directly or indirectly, apply the same, or any part thereof, to any other use than by law directed; so help me, God.

Witness to Depose before the Grand Jury

You swear (or affirm) that the evidence you shall give to the grand jury, upon this bill of indictment against A. B., shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Capital Trial

You swear (or affirm) that the evidence you shall give to the court and jury in this trial, between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in a Criminal Action

You swear (or affirm) that the evidence you shall give to the court and jury in this action between the State and A. B. shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness in Civil Cases

You swear (or affirm) that the evidence you shall give to the court and jury in this cause now on trial, wherein A. B. is plaintiff and C. D. defendant, shall be the truth, the whole truth, and nothing but the truth; so help you, God.

Witness to Prove a Will

You swear (or affirm) that you saw C. D. execute (or heard him acknowledge the execution of) this writing as his last will and testament; that you attested it in his presence and at his request; and that at the time of its execution (or at the time the execution was acknowledged) he was, in your opinion, of sound mind and disposing memory; so help you, God.

Witness before a Legislative Committee or Commission

You swear (or affirm) that the testimony you shall give to the committee (or commission) shall be the truth, the whole truth, and nothing but the truth; so help you, God.

General Oath

Any officer of the State or of any county or township, the term of whose oath is not given above, shall take an oath in the following form:

I, A. B., do swear (or affirm) that I will well and truly execute the duties of the office of _____ according to the best of my skill and ability, according to law; so help me, God."

SECTION 7. G.S. 29-30 reads as rewritten:

"§ 29-30. Election of surviving spouse to take life interest in lieu of intestate share provided.

(a) ~~In-Except as provided in this subsection, in~~ lieu of the intestate share provided in G.S. 29-14 or G.S. 29-21, or of the elective share provided in G.S. 30-3.1, the surviving spouse of an intestate or the surviving spouse who has petitioned for an elective share ~~shall be~~ is entitled to take as the surviving spouse's intestate share or elective share a life estate in one third in value of all the real estate of which the deceased spouse was seised and possessed of an estate of inheritance at any time during ~~coverture, except that real estate as to which the surviving spouse;~~ coverture. The surviving spouse is not entitled to take a life estate in any of the following circumstances:

(1) ~~Has~~ The surviving spouse has waived the surviving spouse's rights by joining with the other spouse in a conveyance ~~thereof, or~~ of the real estate.

(1a) The surviving spouse has waived the right to take a life estate in lieu of an intestate or elective share by an express written waiver thereof.

(2) ~~Has released or quitclaimed~~ The surviving spouse has waived, released, or conveyed the surviving spouse's interest ~~therein in the real estate~~ in accordance with ~~G.S. 52-10, or~~ G.S. 52-10.

(3) ~~Was~~ The surviving spouse was not required by law to join in a conveyance ~~thereof of the real estate~~ in order to bar the elective life estate, or estate.

(3a) The surviving spouse has executed a written declaration permitting the deceased spouse to convey or encumber the real estate without the consent or joinder of the surviving spouse.

(3b) [The deceased spouse's interest in the real estate was transferred to another person in a partition proceeding under Chapter 46A of the General Statutes that was initiated before the deceased spouse's death.]

(4) ~~Is~~ The surviving spouse is otherwise not legally entitled to the election provided in this section.

(b) The surviving spouse may elect to take a life estate in the usual dwelling house occupied by the surviving spouse at the time of the death of the deceased spouse if ~~such the~~ dwelling house ~~were~~ was owned by the deceased spouse at the time of the deceased spouse's death, together with the outbuildings, improvements and easements thereunto belonging or appertaining, and lands upon which situated and reasonably necessary to the use and enjoyment thereof, as well as a fee simple ownership in the household furnishings therein, despite the fact that a life estate therein might exceed the fractional limitation provided for in subsection (a) of this section. If the value of a life estate in the dwelling house is less than the value of a life estate in one-third in value of all the real estate, the surviving spouse may elect to take a life estate in the dwelling and a life estate in such other real estate as to make the aggregate life estate of the surviving spouse equal to a life estate in one-third in value of all the real estate.

(c) The election provided for in subsection (a) of this section shall be made by the filing of a petition in accordance with Article 2 of Chapter 28A of the General Statutes with the clerk of the superior court of the county in which the administration of the estate is pending, or, if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be commenced. The election shall be made prior to the ~~shorter~~ of the following applicable periods:

- 1 (1) In case of testacy, the shorter of (i) within 12 months of the date of death of
2 the deceased spouse if letters testamentary are not issued within that period,
3 or (ii) within one month after the expiration of the time limit for filing a claim
4 for elective share if letters have been issued.
- 5 (2) In case of intestacy, the shorter of (i) within 12 months after the date of death
6 of the deceased spouse if letters of administration are not issued within that
7 period, or (ii) within one month after the expiration of the time limit for filing
8 claims against the estate, if letters have been issued.
- 9 (3) Repealed by Session Laws 2011-344, s. 5, effective January 1, 2012.
- 10 (4) If litigation that affects the share of the surviving spouse in the estate is
11 pending, including a pending petition for determination of an elective share,
12 then within such reasonable time as may be allowed by written order of the
13 clerk of the superior court.
- 14 ~~(5)~~ Nothing in this subsection ~~shall extend~~ extends the period of time for a surviving
15 spouse to petition for an elective share under Article 1A of Chapter 30 of the General Statutes.
- 16 (c1) The petition ~~shall~~ shall do all of the following:
- 17 (1) Be directed to the clerk with whom ~~filed~~ filed.
- 18 (2) State that the surviving spouse making the ~~same petition~~ elects to take under
19 this section rather than under the provisions of G.S. 29-14, 29-21, or 30-3.1,
20 as ~~applicable~~ applicable.
- 21 (3) Set forth the names of all heirs, devisees, personal representatives and all other
22 persons in possession of or claiming an estate or an interest in the property
23 described in subsection ~~(a); and~~ (a) of this section.
- 24 (4) Request the allotment of the life estate provided for in subsection ~~(a)-(a)~~ of
25 this section.

(c2) The petition may be filed in person, or by attorney authorized in a writing executed and duly acknowledged by the surviving spouse and attested by at least one witness. If the surviving spouse is a minor or an incompetent, the petition may be executed and filed by a general guardian or by the guardian of the person or estate of the minor or incompetent spouse. If the minor or incompetent spouse has no guardian, the petition may be executed and filed by a guardian ad litem appointed by the clerk. The petition, whether in person or by attorney, shall be filed as a record of the court, and a summons together with a copy of the petition shall be served upon each of the interested persons named in the petition, in accordance with G.S. 1A-1, Rule 4.

(d) In case of election to take a life estate in lieu of an intestate share or elective share, as provided in either G.S. 29-14, 29-21, or ~~30-3.3(a), 30-3.1,~~ the clerk of superior court, with whom the petition has been filed, shall summon and appoint a jury of three disinterested persons who being first duly sworn shall promptly allot and set apart to the surviving spouse the life estate provided for in subsection (a) of this section and make a final report of ~~such this~~ action to the clerk.

(e) The final report shall be filed by the jury not more than 60 days after the summoning and appointment thereof, shall be signed by all jurors, and shall describe by metes and bounds the real estate in which the surviving spouse shall have been allotted and set aside a life estate. It shall be filed as a record of court and a certified copy thereof shall be filed and recorded in the office of the register of deeds of each county in which any part of the real property of the deceased spouse, affected by the allotment, is located.

(f) In the election and procedure to have the life estate allotted and set apart provided for in this section, the rules of procedure relating to partition proceedings under ~~Chapter 46~~ Chapter 46A of the General Statutes shall apply except insofar as the ~~same rules~~ same rules would be inconsistent with the provisions of this section. A determination of the life estate under this section may be appealed in accordance with G.S. 1-301.3.

(g) Neither the household furnishings in the dwelling house nor the life estates taken by election under this section ~~shall be~~ are subject to the payment of debts due from the estate of the deceased spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived the surviving spouse's rights by joining with the other spouse in the making thereof; or

(2) By a purchase money mortgage or deed of trust, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or

(3) By a mortgage or deed of trust made prior to the marriage; or

(4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.

(h) If no election is made in the manner and within the time provided for in subsection (c) of this section, the surviving spouse shall be conclusively deemed to have waived the surviving spouse's right to elect to take under the provisions of this section, and any interest which the surviving spouse may have had in the real estate of the deceased spouse by virtue of this section shall terminate."

[Staff Note: The General Statutes Commission approved most of these amendments to G.S. 29-30 when it considered the Real Property Partitions/Elective Life Estate Third Draft. Minor deviations from that draft are highlighted. Please note that G.S. 30-3.3 was repealed.]

SECTION 8. G.S. 31A-6 reads as rewritten:

"§ 31A-6. Survivorship property.

(a) Where the slayer and the decedent hold property with right of survivorship as joint tenants, joint owners, joint ~~obligees~~ obligees, or otherwise, the following apply:

(1) The decedent's share passes immediately upon the decedent's death to the decedent's estate.

(2) The slayer's share shall be held by the slayer for life and at the slayer's death shall pass to the decedent's estate.

(b) Where three or more persons, including the slayer and the decedent, hold property with right of survivorship as joint tenants, joint owners, joint ~~obligees~~ obligees, or otherwise, the following apply:

(1) The decedent's share is converted effective upon the decedent's death to that of a tenant in common and passes to the decedent's estate.

(2) The remaining persons, including the slayer, continue to hold their shares with right of survivorship.

(3) If the slayer becomes the final survivor, upon the slayer's death, the slayer's share, which includes the other shares that passed to the slayer as the final survivor, shall pass to the decedent's estate.

(c) During the slayer's lifetime, the slayer ~~shall have~~ has the right to the income from the slayer's share, subject to the rights of the slayer's creditors.

(d) Nothing in this section prohibits a partitioning of the property pursuant to ~~Chapter 46~~ Chapter 46A of the General Statutes or severing the joint tenancy in any manner provided by law. Any share taken by the slayer by reason of partition or severance ~~shall be~~ is subject to subdivision (3) of subsection (b) of this section."

SECTION 9. Article 1 of Chapter 41 of the General Statutes is amended by adding a new section to read:

"§ 41-11.2. Sale of standing timber; life estate.

If real property with standing timber is subject to a life estate, the life tenant or owner of the remainder or reversionary interest may initiate a proceeding under Chapter 46A of the General Statutes to sell the timber, separate from the real property, pursuant to G.S. 46A-80."

SECTION 10. G.S. 93A-43 reads as rewritten:

"§ 93A-43. Partition.

When a time share is owned by two or more persons as tenants in common or as joint ~~tenants~~
~~tenants,~~ either may seek a partition by sale of that interest under Chapter 46A of the General
Statutes, but no purchaser of a time share ~~may shall~~ maintain ~~an action for partition by sale or in~~
~~kind a proceeding for partition, whether by actual partition or by partition sale,~~ of the unit in
which ~~such the~~ time share is held."

SECTION 11. G.S. 136-96 reads as rewritten:

**"§ 136-96. Road or street not used within 15 years after dedication deemed abandoned;
declaration of withdrawal recorded; joint tenants or tenants in common; defunct
corporations.**

(a) Every strip, piece, or parcel of land ~~which shall have~~ that has been at any time
dedicated to public use as a road, highway, street, avenue, or for any other purpose whatsoever,
by a deed, grant, map, plat, or other means, ~~which shall not have~~ and that has not been actually
opened and used by the public within 15 years ~~from and after the dedication thereof, shall be~~
~~thereby after its dedication, is~~ conclusively presumed to have been abandoned by the public for
the purposes for which ~~same shall have been~~ it was dedicated; and no person shall have any ~~right,~~
~~right~~ or cause of action ~~thereafter, thereafter~~ to enforce any public or private easement ~~therein, in~~
~~the land, except where such dedication was made less than 20 years prior to April 28, 1953, such~~
~~right may be asserted within one year from and after April 28, 1953; provided, that no~~

(b) Notwithstanding subsection (a) of this section, no abandonment of any ~~such~~ public or
private right or easement shall be presumed until the dedicator or ~~some one or more of those a~~
~~person~~ claiming under ~~him shall file and cause~~ the dedicator files or causes to be recorded in the
register's office of the county where ~~such the~~ land lies a declaration withdrawing ~~such the~~ strip,
~~piece-piece,~~ or parcel of land from the public or private use to which it ~~shall have theretofore~~
~~been dedicated in the manner aforesaid; provided further, that where~~ was dedicated.

(c) When the fee simple title is vested in tenants in common or joint tenants of any land embraced within the boundaries of ~~any such a~~ road, highway, street, ~~avenue~~ avenue, or other land dedicated for any public purpose whatsoever, as described in this section, any one or more of ~~such tenants, the cotenants, on his own or their the cotenant's~~ behalf and on ~~the~~ behalf of the ~~others of such tenants, other cotenants,~~ may execute and cause to be registered in the office of the register of deeds of the county where ~~such the~~ land is situated the declaration of withdrawal provided for in this ~~section, and, under section. Under Chapter 46 of the General Statutes of North Carolina, entitled "Partition," and Chapter 1, Article 29A of the General Statutes of North Carolina, known as the "Judicial Sales Act," Chapter 46A (Partition) of the General Statutes and Article 29A (Judicial Sales) of Chapter 1 of the General Statutes,~~ and on petition of any one or more of ~~such tenants such land the cotenants,~~ the land thereafter may be partitioned by sale only as between or among ~~such tenants, and the cotenants,~~ irrespective of ~~who~~ which cotenant may be in actual possession of ~~such land, provided further, that in such partition proceedings any such tenants in common or joint tenants the land. In the partition proceeding, any cotenant may object to such the withdrawal certificate and the court shall thereupon order the same certificate cancelled of record; record.~~

(d) ~~that where~~ When any corporation has dedicated any strip, ~~piece~~ piece, or parcel of land in the manner ~~herein set out, set out in this section, and said the~~ dedicating corporation is ~~not now no longer~~ in existence, it shall be conclusively presumed that the ~~said~~ corporation has no further right, title title, or interest in ~~said strip, piece, or parcel of the~~ land, regardless of the provisions of conveyances from ~~said the~~ corporation, or those holding under ~~said corporation, the corporation~~ retaining title and interest in ~~said strip, piece, or parcel of land so dedicated; the~~ the land. The right, title and interest in ~~said strip, piece, or parcel of the~~ land shall be conclusively presumed to be vested in those ~~persons, firms or corporations persons~~ owning lots or parcels of land adjacent ~~thereto, to it,~~ subject to the provisions ~~set out herein before in of~~ this section.

(e) ~~The provisions of this section shall have no application in any case.~~ This section does not apply in any of the following circumstances:

(1) ~~where~~ When the continued use of any strip of land dedicated for street or highway purposes ~~shall be~~ is necessary to afford convenient ingress or egress to any lot or parcel of land sold and conveyed by the dedicator of ~~such~~ the street or highway. ~~This section shall apply to dedications made after as well as before April 28, 1953.~~

(2) ~~The provisions of this section shall not apply when~~ When the public dedication is part of a future street shown on the street plan adopted pursuant to G.S. 136-66.2. Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2. This resolution shall be attached to the declaration of withdrawal and shall be registered in the office of the register of deeds of the county where the land is situated.

(f) This section applies to dedications made after as well as before April 28, 1953."

PART III. FURTHER TECHNICAL, CONFORMING, AND MODERNIZING AMENDMENTS TO THE ELECTIVE LIFE ESTATE STATUTE

SECTION 12. G.S. 29-30(c) and (g), as amended by Section 7 of this act, read as rewritten:

"(c) The election provided for in subsection (a) of this section shall be made by the filing of a petition in accordance with Article 2 of Chapter 28A of the General Statutes (i) with the clerk of the superior court of the county in which the administration of the estate is pending, ~~or,~~ or (ii) if no administration is pending, then with the clerk of the superior court of any county in which the administration of the estate could be ~~commenced.~~ commenced, together with the

recording of a notice indicating the county and file number of the clerk's filing with the register
of deeds in every county where real property to be claimed under the filing is located. The
election shall be made prior to the following applicable periods:

(1) In case of testacy, the shorter of (i) within 12 months of the date of death of
the deceased spouse if letters testamentary are not issued within that period,
or (ii) within one month after the expiration of the time limit for filing a claim
for elective share if letters have been issued.

(2) In case of intestacy, the shorter of (i) within 12 months after the date of death
of the deceased spouse if letters of administration are not issued within that
period, or (ii) within one month after the expiration of the time limit for filing
claims against the estate, if letters have been issued.

(3) Repealed by Session Laws 2011-344, s. 5, effective January 1, 2012.

(4) If litigation that affects the share of the surviving spouse in the estate is
pending, including a pending petition for determination of an elective share,
then within such reasonable time as may be allowed by written order of the
clerk of the superior court.

Nothing in this subsection extends the period of time for a surviving spouse to petition for an
elective share under Article 1A of Chapter 30 of the General Statutes.

...

(g) Neither the household furnishings in the dwelling house nor the life estates taken by
election under this section are subject to the payment of debts due from the estate of the deceased
spouse, except those debts secured by such property as follows:

(1) By a mortgage or deed of trust in which the surviving spouse has waived the
surviving spouse's rights by joining with the other spouse in the making
~~thereof; or~~ thereof.

- (2) By a ~~purchase-money~~ mortgage or deed of ~~trust~~, trust given by the deceased spouse to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, or by a conditional sales contract of personal property in which title is retained by the vendor, made prior to or during the marriage; or marriage.
- (3) By a mortgage or deed of trust made prior to the ~~marriage~~; or marriage.
- (4) By a mortgage or deed of trust constituting a lien on the property at the time of its acquisition by the deceased spouse either before or during the marriage.
- (5) By a mortgage or deed of trust on property with respect to which the elective life estate provided for in this section does not apply as provided in subsection (a) of this section."

[Staff Note: The General Statutes Commission approved these amendments to G.S. 29-30 when it considered the Real Property Partitions/Elective Life Estate Third Draft.]

PART IV. EFFECTIVE DATE

SECTION 13. This act becomes effective [October 1, 2020]. **Part I of this act applies to partition proceedings commenced on or after that date. Part II of this act does not apply to partition proceedings commenced before that date.**

ADDENDUM: POSSIBLE ADDITIONAL AMENDMENT

SECTION #. G.S. 47A-25 reads as rewritten:

"§ 47A-25. Damage to or destruction of property; repair or restoration; partition sale on resolution not to restore.

Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and restored by the manager or board of directors, or other managing body, using the

proceeds of insurance on the building for that purpose, and unit owners shall be liable for assessment for any deficiency; provided, however, if the building shall be more than two-thirds destroyed by fire or other disaster and the owners of three-fourths of the building duly resolve not to proceed with repair or restoration, then and in that event:

(1) The property shall be deemed to be owned as tenants in common by the unit owners;

(2) The undivided interest in the property owned by the unit owners as tenants in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the unit owner in the property as provided herein; and

(4) The property shall be subject to ~~an action for sale for partition~~ a proceeding for partition by sale at the ~~suit~~ petition of any unit owner, in which event the net proceeds of sale, together with the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among all the unit owners in proportion to their respective undivided ownership of the common areas and facilities, after first paying off, out of the respective shares of unit owners, to the extent sufficient for that purpose, all liens on the unit of each unit owner."